

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 36 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

MALATHIKUTTY K.,SINCE DECEASED THROUGH HER HEIRS & LEGAL R.

Versus

LALBHAI DALPATBHAI INSTITUTE OF INDOLOGY

Appearance:

MR AD OZA for Petitioners

MR DIPAK PATEL for Respondent Nos. 1, 2 & 3

MR SM MAZGAMKAR for Respondent No. 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 20/10/1999

ORAL JUDGEMENT

#. The petitioner since deceased, by this petition under Article 226 of the Constitution of India, praying for quashing and setting aside of the order of the respondent-institution at Annexure-B dated 5/12/1986 under which her services were brought to an end.

#. The facts of the case are that the petitioner was

appointed by the respondent-institution as a Steno-Typist after due selection under the order dated 25/6/86, at Annexure-A on the record of this Special Civil Application. She was given appointment on probation for one year from the date of her joining with a condition that confirmation shall depend upon satisfactory performance of duties allotted to her.

#. The dispute raised is whether it is an order of simpliciter discharge of petitioner-probationer from the services or an order, for her act of joining the employees' union by way of penalty.

#. This writ petition was admitted and interim relief has been granted in favour of the petitioner since deceased and she continued in services as a result of the interim relief till she expired on 28/10/98.

#. The petition is contested by the respondents. A detailed reply is filed.

#. The learned counsel for the petitioner contended that it is not a case of simpliciter discharge of the petitioner from the services of the institute. This is a punitive order. In his submission the court has all the power to lift veil and examine whether this order is simpliciter discharge of the petitioner from the services of the institution or a punitive order. He further contends that the petitioner had started to actively participate in the Union activities which was disliked by the management of the institution and to curb her these activities her services were brought to an end under the impugned order.

#. It has next been contended that the respondent-institution receives grant-in-aid from the Government and is a recognised by the Gujarat University. It is amenable to the jurisdiction of this court. Referring to the provisions of Section 51A of the Gujarat Universities Act, 1949 and ordinance 168 thereof it is contended that the termination of services of the petitioner may be a probationer, was permissible only after notice and prior approval of the university and it is not being done hence the impugned order is void ab initio. It is submitted that the petitioner continued to work under the court's interim order for all these years till she expired i.e. about 12 years and during this period her work was not reported to be unsatisfactory, the impugned order is clearly a punitive action of the institution against her.

#. Shri Patel, learned counsel for the respondent-Institution raised firstly a preliminary objection regarding maintainability of the writ as the institution (Museum) is neither receiving grant-in-aid nor it is a recognised institute, it is not amenable to writ jurisdiction of this court under Article 226 of the Constitution of India. On merits the learned counsel for the respondent contended that the petitioner herself has admitted as a fact that her work was not satisfactory and the respondent-institution has not committed any illegality to terminate her services. In support of this contention Shri Patel, learned counsel for the respondent Nos. 1 to 3 made reference to the document at Annexure-B at page 25 filed by the institution with its reply and stressed that the petitioner tendered her apology for all that institution has found to be against the rules and regulations of the Museum did by her. He further states that the petitioner assured that she will improve her performance and come up to the expectation of the institution. Lastly it is contended that when the Museum is not a recognised institution of the University the provisions as contained under Section 51A of the Gujarat University Act as well as its ordinance 168 are not applicable to the present case. Before dispensing with the services of the petitioner the compliance of these provisions was not to be made by the institution.

#. Shri Mazgaonkar, learned counsel for the respondent-university supports the case of the petitioner. In his submission the institution which includes the museum is a recognised institution of the Gujarat University and the termination of the services of the petitioner made by the institution without following the provisions as contained in Section 51A of the Act and ordinance 168 of the University is illegal.

##. In rejoinder to the submissions made by the learned counsel for the institution the learned counsel for the petitioner submits that the distinction which is sought to be drawn by the respondent-institution in between L.D. Institute of Indology and the Museum is its own creation for its own benefit otherwise the museum is a part of the institution itself. When the institution is recognised institution, it is not necessary each of its departments are to be separately recognised by the University. In support of this contention he made reference to the appointment order of the petitioner and some other documents, which are on the record of this Special Civil Application. It is further submitted that the institution is receiving grant-in-aid and service

conditions of the employees of the institution are to be regulated under the provisions of the Act, Rules or Ordinance of the University is certainly amenable to the writ jurisdiction of this court.

#. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

##. The petitioner in the Special Civil Application made a categorical statement that the institution receives grant in aid from the State Government. It is also not in dispute that the institution is a recognised institution of the Gujarat University. The institution run by a public trust registered under the Bombay Public Trust Act and a society registered under the Societies Registration Act, 1980. From these facts, I find that the distinction sought to be made in between the institution and museum is certainly artificial made for its own benefits. From para 5 of the reply to the Special Civil Application I find that it is an educational institution and it receives admittedly grant from the Government, which reads,

"The funds of the Institute are separate. It is run out of the donations received by the Institute which runs Lalbhai Dalpatbhai Bharatiya Sanskruti Vidya Mandir, and the admissible maintenance grant from the Government as an educational institution. The grant received by the Vidya Mandir is for a specific purpose, namely, for paying the salary to the employees holding only the approved posts and the expenses of approved miscellaneous items. The other expenses are borne out of donations. The grant is of small amount of 25% of the total expenditure of the Institute.

The L.D.Museum, as stated above, has different objects and does not receive any grant from the Government. It is run on donations. The accounts are also maintained separately. The salary of the employees and other expenses of L.D.Museum are debited in the separate accounts maintained in respect of the L.D.Museum."

The grant may be of 25% of the total expenditure of the institution but this institution is recognised by the Gujarat University and the service conditions of the employees are protected under the University Act and the

ordinance framed thereunder.

##. Taking into consideration the totality of the facts of the case, it is too difficult to accept that this institution is not amenable to the writ jurisdiction of this court. This petition is pending in the court since 1987 and the petitioner expired during this period. At this stage when the service conditions of the petitioner were regulated under the statutory provisions, it cannot be thrown out only on the ground that the institution is not amenable to the writ jurisdiction of this court.

##. The contention of the learned counsel for the respondent-institution that the petitioner has been appointed in L.D.Museum, which is a separate entity of Lalbhai Dalpatbhai Institute of Indology is wholly misconceived. For this distinction, leaving apart it is wholly misconceived otherwise also the learned counsel for the institution failed to produce any cogent and satisfactory evidence on the record of this Special Civil Application. The appointment order of the petitioner is on the record of this Special Civil Application and I find therefrom that the petitioner was appointed under the order of Administrative Trustee of Lalbhai Dalpatbhai Institute of Indology. Not only this it is important and significant fact to be noted that in the appointment order it is stated that the appointment of the late petitioner was as per the Gujarat University Rules. In case this appointment would have been for museum and the museum would have been altogether different entity then L.D. Institute of Indology, what for this mention was necessary. The Gujarat University Rules are applicable to the institution undisputedly. The appointment of the petitioner has been made as per the Gujarat University Rules, it goes to show that it had been made for the institution and not for the Museum. I find sufficient merits in the contentions of the learned counsel for the petitioner that museum is in fact a part of the institution and as it is part of the institution, may be a department it needs not to be separately recognised by the University.

##. On the record of this Special Civil Application the respondent-institution has not produced any material to show how this Museum is altogether a separate entity than the institution. Heavy burden lies on the respondent-institution to show and establish that this museum is nothing to do with the institution. How the museum has been created, what are its rules, regulations or memorandum and articles of association etc. nothing has been produced on the record by the respondent Nos. 1

to 3. The document at Annexure-B the order of termination of the services of the petitioner is equally very relevant. There also the reference of L.D. Institute of Indology is made. This order has to be read with Annexure-A and a conjoint reading thereof gives out that the appointment of the petitioner, which was made in the institution has been terminated. The order of the appointment and the termination on the services of the petitioner were made by one and same person, Administrative Trustee of the institution. It is not the case of the respondent-institution nor it produced any material to show that there are two separate trust and society running the institution and Museum. The document at Annexure-C is equally another relevant document. It is the copy of the representation submitted by the employees of the institution claiming interim relief. This has been submitted to the Chairman, L.D. Institute of Indology, Ahmedabad. It also gives out that the museum is part of the institution. In this document it is mentioned "where the staff of the museum, which is a division of the institution" and this has not been controverted. The petitioner submitted a detailed representation to the University against this action of the institution. It was not the case of the respondent-institution before the university that the museum is not a recognised institution meaning thereby a separate institute than the institute in question. The university is affirmative that the museum is a recognised institute as it is a division of the institute, which is recognised. The letter of the recognition of the institute is there on the record on which there is no dispute.

##. Taking into consideration the totality of facts and circumstances of the case I have no hesitation to hold that the museum is a division of the institute, which is recognised institute.

##. The section 51A of the Gujarat University Rules reads as under :

"51A. (1) No member of the teaching other academic and non-teaching staff of an affiliated college and recognised or approved institution shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and until :-

(a) he has been given a reasonable

opportunity of making representation on any such penalty proposed to be inflicted on him, and

(b) the penalty to be inflicted on him is approved by the Vice-Chancellor or any other officer of the University authorised by the Vice-Chancellor in this behalf.

(2) No termination of service of such member not amounting to his dismissal or removal falling under sub-section (1) shall be valid unless :-

(a) he has been given a reasonable opportunity of showing cause against the proposed termination, and

(b) such termination is approved by the Vice-Chancellor or any officer of the University authorised by the Vice-Chancellor in this behalf:

Provided that nothing in this sub-section shall apply to any person who is appointed for a temporary period only.

Clause 12 of the Ordinance 168 is relevant for the decision of this case, which reads as under :

(12) No permanent employee or an employee on probation shall be punished or dismissed or terminated from services or reduction in rank without being given a reasonable opportunity of being heard in his defence. In the case of dismissal or termination of services a regular inquiry should be held by the competent authority of the affiliated college or recognised institution concerned. The procedure in this behalf shall be as under :

(a) A preliminary inquiry to see, there is a prima-facie case for action.

(b) A written charge-sheet specifying the charge or charges brought shall be given to the employee.

(c) The employee concerned shall be asked to submit his reply to the charge-sheet within the period to be specified in the charge-sheet.

(d) The employee concerned shall have a right to cross examination any witness against him and to lead evidence (documentary or oral) in his defence.

Sub-section (2) of Section 51A of the Gujarat University Act, is very clear and the termination of the service of the member of the teaching or non-teaching staff of a recognised or approved institute not amounting to dismissal or removal shall not be valid unless he has been given a reasonable opportunity of showing cause against proposed termination and (b) such termination is approved by the Vice-Chancellor or any officer of the University authorised by the Vice-Chancellor in his behalf. The proviso to this Sub-section is not applicable to the case as the petitioner was not appointed for a temporary period only. It was an appointment on the probation after selection.

##. The learned counsel for the institution emphasised that Section 51A of the Act, aforesaid is applicable in a case where the termination, dismissal or removal has to be made by way of penalty. I do not find any substance in this contention. Sub-section (1) of the Section 51A of the Act no doubt relates to the matter of the penalties to be given for the proved misconduct but Sub-section (2) is an exception and it related to the termination of services other than the dismissal or removal meaning thereby other than by way of penalty. In case the interpretation made by the learned counsel for the respondent-institution is accepted then sub-section (2) of the Section 51A of the Gujarat University Act shall become nugatory or a provision without any significance or effect. Legislature in its wisdom never framed a law, for the same subject / object and purpose. The distinction is clearly borne out from the reading of the sub-section (2) which operates in the field of simpliciter termination of services of the employees other than by way of penalty and sub-section (1) of the Section covers the case where the services of the employees are brought to an end by dismissal or removal or reduced in rank for proved misconduct. On plain reading of the provisions of the ordinance 168, no doubt

whatsoever remains. This ordinance is applicable in the case of termination of services of a probationer also. The ordinance 168 provides that where the services of a probationer are to be dispensed with, the same procedure has to be applied which is to be followed in the case of a dismissal of the employee from services. In sub-section (2) of Section 51A of the Act no inquiry is contemplated but only opportunity to show cause against the proposed termination of services is to be given and the approval of the same is to be taken from the University.

##. The learned counsel for the institution has failed to show any specific provision from the Act or ordinance of the University, which provides that in the case of termination of services of a probationer, no notice or opportunity of hearing is required to be given. In government services normally in the case of termination of the service of a probationer by a simpliciter discharge it may not be necessary to hold any inquiry or to give any notice or opportunity of hearing but where the service conditions are regulated under the provisions of the service statute those are to be adhered too otherwise the action shall be illegal. Here the termination of services of the probationer covers under Section 51A of the Gujarat university Act and before bringing the services of the petitioner to an end the provisions of that section were to be followed, which admittedly have not been done in the present case by the institution.

##. The termination of the services of the petitioner made is violation of the provisions of Section 51A of the Act, cannot be allowed to stand. As a result thereof, this Special Civil Application succeeds and the same is allowed and the order at Annexure-B dated 5/12/1986 of the respondent-institution is quashed and set aside. As a result of quashing and setting aside of this order, the legal heirs of the deceased-petitioner shall be entitled for all the consequential benefits follows therefrom. The rule is made absolute accordingly. It is a fit case where the petitioner has to be compensated for the expenses, which he incurred in filing of the Special Civil Application by awarding of the costs. Shri Oza, learned counsel for the petitioner submits that he has charged Rs.3,000/- as fees from the petitioner to render his professional services in this case. He further states that this is not the only expenses which this lady has incurred in this litigation. However, for other expenses there is nothing on the record and the same cannot be granted. The respondent-institution is

directed to pay Rs.3,000/- to the legal heirs of the deceased petitioner as costs of this litigation.

(S.K.Keshote, J.)

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